

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS



FILED

Feb 13, 2023, 9:53 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0139

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0140

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on February 10, 2023, at 2:58 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Michael Moens
Grievance and Appeals Fair Hearing Specialist
Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for personal care services was incorrect.

The first second is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for homemaker services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED], [REDACTED] appeared on behalf of Petitioner.

Michael Moens, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana") appeared on behalf of Respondent. Dr. Manohar Chenchugalla ("Dr. Chenchugalla"), Medical Director for Humana, attended as a witness for Respondent.

Sandra Durden, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent eleven (11)-pages of documents. The eleven (11)-pages appear in the Office of Fair Hearings document management system as file title "23-FH0139 & 23-FH0140 Additional Information – Evidence.pdf". Absent an objection from the Respondent, the undersigned admitted the eleven (11)-page document into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and ninety-one (291)-page evidence packet. The two hundred and ninety-one (291)-page evidence packet appears in the Office of Fair Hearings document management system as file titles "Evidence Packet 23-FH0139 23-FH0140_Part1.pdf", "Evidence Packet 23-FH0139 23-FH0140_Part2.pdf", "Evidence Packet 23-FH0139 23-FH0140_Part3.pdf", "Evidence Packet 23-

FH0139 23-FH0140_Part4.pdf”, and “Evidence Packet 23-FH0139 23-FH0140_Part5.pdf”. Absent an objection from the Petitioner, the undersigned admitted the two hundred and ninety-one (291)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. See page 1 of RCE 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED]. *Id.* Petitioner lives with [REDACTED]. *Id.* at 49. Petitioner is diagnosed with the following: [REDACTED] [REDACTED] *Id.* at 50, 54. Further, Petitioner “has [REDACTED].” *Id.* at 50. Petitioner is [REDACTED] *Id.* at 53.

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), Petitioner’s needs for activities of daily living are as follows: [REDACTED] [REDACTED] Petitioner needs assistance (cannot do at all). *Id.* at 52.

4. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: [REDACTED] [REDACTED] *Id.* at 53.

5. [REDACTED] is scheduled for [REDACTED] on February 20, 2023. See page 9 of PCE 1. [REDACTED] will be unable to lift anything over ten (10) pounds for 6 – 8 weeks [REDACTED] *Id.*

6. Petitioner requested an additional 17.5 hours of homemaker services. In a Notice of Adverse Benefit Determination (“NABD”), dated January 20, 2023, Respondent denied Petitioner’s request. See pages 3 – 7 of RCE 1. The NABD explained the basis of the denial as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (See Rule)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or
2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

The facts that we used to make our decision are:

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law – specifically see checked box above) and reflects the application of the Plan’s approved review criteria and guidelines.

You have requested additional 17.5 hours of personal care (PC) and additional 17.5 hours of homemaker (HMK) services per week. You currently receive 28 hours of PC, 14 hours of adult companion care (ACC) and 14 hours of HMK services per week. You are a [REDACTED] who resides [REDACTED]. You are alert only to self and sometimes to place and close family. You have multiple medical problems including [REDACTED]
[REDACTED] You are [REDACTED]
[REDACTED]. You use wheelchair for mobility and

require 1-1 assistance to propel. Your caregiver is expecting to [REDACTED] and is requesting additional hours. You currently receive 56 hours of total care daily giving you 8 hours of care daily. Your caregiver can assist you with other things where [REDACTED] doesn't have to lift [REDACTED]. Your current hours should be sufficient for your needs and hence, we are denying your requests.

...

Pages 3 - 4 of RCE 1.

7. Petitioner requested an additional 17.5 hours of personal care services. In a Notice of Adverse Benefit Determination ("NABD"), dated January 20, 2023, Respondent denied Petitioner's request. *Id.* at 11 - 15. The NABD explained the basis of the denial as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (See Rule)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 4. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
 5. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 6. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

3. Enable the enrollee to maintain or regain functional capacity; or
4. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

The facts that we used to make our decision are:

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law – specifically see checked box above) and reflects the application of the Plan's approved review criteria and guidelines.

You have requested additional 17.5 hours of personal care (PC) and additional 17.5 hours of homemaker (HMK) services per week. You currently receive 28 hours of

PC, 14 hours of adult companion care (ACC) and 14 hours of HMK services per week. You are a [REDACTED] who resides [REDACTED]. You are alert only to self and sometimes to place and close family. You have multiple medical problems including [REDACTED]. You are [REDACTED]. You use wheelchair for mobility and require 1-1 assistance to propel. Your caregiver is expecting to [REDACTED] and is requesting additional hours. You currently receive 56 hours of total care daily giving you 8 hours of care daily. Your caregiver can assist you with other things where [REDACTED] doesn't have to lift [REDACTED]. Your current hours should be sufficient for your needs and hence, we are denying your requests.

...

Pages 11 - 12 of RCE 1.

8. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR") dated January 24, 2023, upholding the denial of homemaker services. *Id.* at 25 – 27.

The NPAR explained as follows:

The reason for the decision was based on the information received. You requested your initial request for 17.5 hours of homemaker services each week be reconsidered (appeal) for [Petitioner].

[Petitioner] currently receives 28 hours of personal care (PC), 14 hours of adult companion care (ACC), and 14 hours of homemaker (HMK) services per week. [REDACTED] who [REDACTED]. [REDACTED] is alert only to self and sometimes to place and close family. [REDACTED] has multiple medical problems including [REDACTED]. [REDACTED] is bedbound, uses a [REDACTED]. [Petitioner] uses a wheelchair for mobility and requires 1-1 assistance to propel. You are expecting to [REDACTED] and requesting additional hours. [Petitioner] currently receives 56 hours of total care daily giving [REDACTED] 8 hours of care daily. You can assist [Petitioner] with other things where you do not have to lift [REDACTED].

After thorough review of [Petitioner]'s chart, we have decided to uphold the denial of 17.5 hours of homemaker services each week. The hours [REDACTED] is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.

Page 25 - 27 of RCE 1.

9. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”) dated January 24, 2023, upholding the denial of personal care services. *Id.* at 32 – 34.

The NPAR explained as follows:

The reason for the decision was based on the information received. You requested your initial request for 17.5 hours of personal care services each week be reconsidered (appeal) for [Petitioner].

[Petitioner] currently receives 28 hours of personal care (PC), 14 hours of adult companion care (ACC), and 14 hours of homemaker (HMK) services per week. [REDACTED] is alert only to self and sometimes to place and close family. [REDACTED] has multiple medical problems including [REDACTED] is bedbound, uses a [REDACTED]. [Petitioner] uses a wheelchair for mobility and requires 1-1 assistance to propel. You are expecting [REDACTED] and requesting additional hours. [Petitioner] currently receives 56 hours of total care daily giving her 8 hours of care daily. You can assist [Petitioner] with other things where you do not have to lift [REDACTED].

After thorough review of [Petitioner]’s chart, we have decided to uphold the denial of 17.5 hours of personal care services each week. The hours [REDACTED] is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.

Page 32 – 33 of RCE 1.

10. On January 24, 2022, Petitioner requested a Fair Hearing to challenge the denial of personal care and homemaker services. On February 9, 2023, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 10, 2023, at 3:00 p.m. EST.

11. [REDACTED] testified to the following:

- a. [REDACTED] requested the additional services due to [REDACTED] that will prevent [REDACTED] from assisting Petitioner. [REDACTED] will be unable to perform any strenuous lifting activities, which is required to clean

Petitioner. [REDACTED] is concerned that [REDACTED] will be unable to ever provide care for Petitioner after [REDACTED] is completed.

- b. [REDACTED] does not believe that splitting Petitioner's services into shifts is appropriate because Petitioner has problems becoming dehydrated and must have water approximately every 2 to 2.5 hours and because [REDACTED] must be changed.
- c. Petitioner is changed frequently.
- d. Petitioner's care aide provides care for eight (8) hours each day, while [REDACTED] provides care in the evening when [REDACTED] returns home from work. [REDACTED] provides approximately five (5) hours of care each day.

12. Dr. Chenchugalla is a Medical Director for Humana. Dr. Chenchugalla's testimony established the following facts:

- a. Petitioner was approved to receive an additional seven (7) hours of personal care services each week.
- b. Petitioner has one hundred and ninety-seven (197) hours of respite care services that can be used to assist Petitioner.
- c. Dr. Chenchugalla asserted that the services could be provided into shifts. It is Dr. Chenchugalla's opinion that the additional respite hours and personal care hours are sufficient to meet Petitioner's needs.

13. Petitioner's approved services are as follows: thirty-five (35) hours of personal care services, weekly; fourteen (14) hours of adult companion care services, and fourteen (14) hours of homemaker services, weekly. *Id.* at 3 – 4 and ¶ 12. Additionally, Petitioner has one hundred and ninety-seven (197) hours of respite care available. *See* ¶ 12.

CONCLUSIONS OF LAW

14. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

15. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b).

16. Because Petitioner is requesting additional services, Fla. Admin Code R. 59-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

17. The Florida Medicaid Statewide Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care and homemaker services:

1.1 Description and Program Goal

Under the Statewide Medicaid Managed Care Long-Term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting

- Transferring

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

4.1 General Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

4.2.1.1 Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

4.2.2.6 Personal Care

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

18. The LTC Policy also addresses medical necessity:

1.3.14 Medically Necessary or Medical Necessity

For the purposes of this policy, the service must meet either of the following criteria:

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

19. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R.

59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

A. Personal Care Services

20. Petitioner requested an additional 17.5 hours of personal care services. *See* ¶ 7. In an NABD, dated January 20, 2023, Respondent denied Petitioner’s request. *Id.* The NABD explained that the request was not medically necessary, however, it did not specify which prong of medical necessity was not met by the request. *Id.* The NABD further explained that Petitioner’s caregiver could assist with other tasks that do not require lifting and that Petitioner’s care could be divided into shifts to provide care throughout the day. *Id.* At the Fair Hearing, Dr. Chenchugalla testified that an additional seven (7) hours of personal care services were added the morning of the Fair Hearing. *See* ¶ 12. Thus, the issue is the denial of 10.5 hours of personal care services.

21. As provided in the LTC Policy, personal care services are intended to provide “assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” As provided in the record, Petitioner needs total assistance (cannot do at all) with all ADLs and IADLs. *See* ¶¶ 3 and 4. Petitioner currently receives thirty-five (35) hours of personal care services, weekly; fourteen (14) hours of adult companion care services, weekly; and fourteen (14) hours of homemaker services, weekly; and one hundred and ninety-seven (197) hours of respite care. *See* ¶ 13.

22. As Petitioner bears the burden of proof, Petitioner must show that is medically necessary for Petitioner to receive the additional 10.5 hours of services. At the hearing, [REDACTED] explained that [REDACTED] provides approximately five (5) hours of care for Petitioner, and that [REDACTED] will

be unable to do so due to [REDACTED]. See ¶ 11. Here, Respondent has already approved an additional seven (7) hours of personal care each week, which is one (1) hour per day. See ¶ 12. Additionally, Dr. Chenchugalla testified that Respondent has provided 300 hours of respite care, of which 197 hours are still available. The 197 hours approximates to 3.5 hours of care each day for 8 weeks. Here, [REDACTED] recovery time is 6 – 8 weeks. See ¶ 5. Moreover, Dr. Chenchugalla explained that Petitioner could divide [REDACTED] service hours into shifts. See ¶ 12. [REDACTED] explained that Petitioner needs to stay hydrated and has a water regiment performed every 2 – 2.5 hours. However, if Petitioner has three (3) shifts, three (3) hours in duration, separated by 2.5 hours, then that would provide coverage for Petitioner and ensure that [REDACTED] water regiment is maintained. As such, Petitioner did not show that the request for services was not “in excess” of Petitioner’s needs.

23. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of personal care services was incorrect.

B. Homemaker Services

24. Petitioner requested an additional 17.5 hours of homemaker services. See ¶ 6. In an NABD, dated January 20, 2023, Respondent denied Petitioner’s request. *Id.* The NABD explained that the request was not medically necessary, however, it did not specify which prong of medical necessity was not met by the request. *Id.* The NABD further explained that Petitioner’s caregiver could assist with other tasks that do not require lifting and that Petitioner’s care could be divided into shifts to provide care throughout the day. *Id.*

25. As provided in the LTC policy, homemaker services are the “provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.” Petitioner needs total assistance with [REDACTED]. See ¶ 4.

26. Again, Petitioner bears the burden of proof to show that the denial of services is incorrect. As discussed, *supra* ¶ 22, [REDACTED] explained that Petitioner needs additional services to cover the five (5) hours of care that [REDACTED] cannot provide due to [REDACTED]. Again, as discussed, *supra* ¶ 22, Respondent approved an additional one (1) hour each day of personal care and approved 300 hours of respite care, of which 197 hours are still available. Here, [REDACTED]’s recovery time is 6 – 8 weeks, which should provide enough respite care to cover for [REDACTED]. See ¶ 5. As such, Petitioner did not show that the request for homemaker services was not “in excess” of Petitioner’s needs.


27. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of homemaker services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s denial of personal care services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial of personal care services is **DENIED**.

Respondent’s denial of homemaker services homemaker services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial of homemaker services is **DENIED**.

DONE and **ORDERED** this 13th day of February, 2023, in Tallahassee, Leon County, Florida.

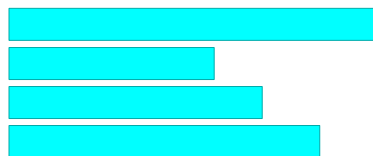
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JOSEPH MABRY, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:



Humana Medical Plan, Inc.
GAMedicaidRightFax@humana.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com